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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,167	10/10/2003	Andrew T. Wilson	5038-293	2311
32231 7590 10/18/2011 MARGER JOHNSON & MCCOLLOM, P.C. - Intel 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204				
EXAMINER DONIELS, JEFFREY				
ART UNIT 2832		PAPER NUMBER		
NOTIFICATION DATE 10/18/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@techlaw.com

Office Action Summary

Application No.

10/684,167

Applicant(s)

WILSON, ANDREW T.

Examiner

JEFFREY DONELS

Art Unit

2832

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on response of 7/1/11.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 11-15, 27-30 and 32-42 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 11-15, 27-30, 32-42 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-608)
Paper No(s)/Mail Date ____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-15,27-30,32-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito (USPGP 2003/012401) in view of Sitrick (USP 6084168).

Ito discloses a mixer apparatus, comprising plural apparatus 10,20,30,40 in physical proximity with each other and capable of at least one-way communication therebetween of an audio score (Fig. 1), comprising: an audio score synthesis mechanism 10,20,30 including a playing mechanism 15,27,37,53 for playing the synthesized audio score; an audio score mixing mechanism 40 coupled with said synthesis mechanism for mixing plural audio scores from 10,20,30 to produce another audio score having components of each of the plural audio scores; and an audio score input mechanism (47; S50) coupled with said mixing mechanism to provide one or more input audio scores thereto for mixing with the synthesized and outplayed played audio score (Fig. 5), said synthesis mechanism, said mixing mechanism and said input mechanism being operable in real time to create a playable audio score having components of plural audio scores produced by said plural proximate apparatus.

It also discloses a storage device 75 to store said playable audio score ("data for implementing various functions such as producing music tone signals" – para. 0043) which fully reads on the recording mechanism claimed.

It does not explicitly disclose at least two such apparatus having an upload mechanism; i.e. configuring of the apparatus 10,20,30,40 as either a "master" or as a "slave" in the system.

Sitrick discloses a music compositions communication system which comprises workstations 105 which can be configured as either a master of a network or as a slave in a network of workstations (Col. 9, lines 44-48; Col. 14, lines 48-63; Col. 16 lines 60-66; Col. 17 lines 3-12), as is known in the art to be desirable so as to allow for different musicians to be able to shift control of the overall performance based on the circumstance or particular song being played.

Sitrick also discloses that each workstation (for example, Fig. 1A) comprises a memory 115 for storing audio scores (Col. 8 lines 7-40) which reads on a recording mechanism to store said playable audio score; and that a master mode (Col. 9, lines 30-40; Col. 17 lines 3-12) reads on an upload mechanism to upload said playable audio score to an external processor for archival recording or outplaying, i.e. storing ("thereby permitting one shared music database to be communicating among all workstations which are a part of the group" – Col. 14 lines 55-60).

It would have been obvious to one of ordinary skill in the art to adapt the teachings of Ito with those of Sitrick, as both inventions are narrowly directed to musical score devices with network functionality, and as it is known in the art to be desirable to allow for different musicians to be able to shift control of the overall performance based on the circumstance or particular song being played. As such, so as to facilitate the a change between the users from a role of "master" to "slave" in such a network of Ito/Sitrick combination devices, it would have been obvious to one of ordinary skill in the art to adapt the Ito/Sitrick combination so that each device would have a mixing mechanism, as it has been held that the mere duplication of working parts does not constitute nonobviousness (see M.P.E.P. 2144.04).

Applicant's arguments have been fully considered, but are not deemed persuasive as the prior art is interpreted to meet the claims as described above.

Regarding Claims 32- 42, Sitrick discloses: a central session host computer 105C, said central session host computer comprising said external processor 115 (Claim 32); wherein said central session host computer is proximate (Fig. 1A) to each of said plural proximate apparatus 105P (Claim 33); wherein said central session host computer is remote to each of said plural proximate apparatus (wireless, can be proximate or remote – Fig. 1A) (Claim 34); each of said plural proximate apparatus further comprising user controls (525,526, keyboard) to facilitate user selection of

operational modes of music synthesis during playback of said playable audio score (Claim 35); wherein said user controls comprise front panel controls (keyboard, Fig. 5) (Claim 36); wherein said front panel controls comprise at least one of a thumb pad and a keypad (keyboard, Fig. 5) (Claim 37); each of said plural proximate apparatus further comprising a display 510 to display a current musical selection (Claim 38); each of said plural portable musical apparatus further including user controls to facilitate user selection of operational modes of music synthesis during playback of said playable audio score, said user controls comprising a thumb pad and a keypad (525,526, keyboard) (Claim 39); each of said plural portable musical apparatus further including a display 510 to display a current musical selection (Claim 40); further comprising a central computer 105C, said central computer comprising said external processor 115, wherein said central computer is proximate (Fig. 1A) to each of said plural portable musical apparatus (Claim 41); further comprising a central computer 105C, said central computer comprising said external processor, wherein said central computer is remote to each of said plural portable musical apparatus (wireless, can be proximate or remote – Fig. 1A) (Claim 42).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Donels whose telephone number is (571)272-2061. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin Enad can be reached on 571-272-2800 ext 32. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey Donels
Primary Examiner
Art Unit 2832

/Jeffrey Donels/
Primary Examiner, Art Unit 2832